

Judicial Review of Infringement of Superman's Famous Trademarks Rights: a Case Study of DC Comic Against PT Maxing Makmur

Kadek Julia Mahadewi, Bagus Gede Ari Rama, Rafika Amalia

¹²³ Faculty of Law, Universitas Pendidikan Nasional

Article Info

Article history:

Accepted: 18 March 2025

Publish: 30 March 2025

Keywords:

Intellectual Property Rights;

Trademark;

Superman Trademark.

Abstract

Well-known trademark infringement is a serious problem that threatens intellectual property rights in the era of globalization. Well-known brands, which have wide recognition in the market, are often the target of infringement by irresponsible parties, which can harm brand owners and consumers. Regulation of Brand Regulation in Law Number 20 of 2016 concerning Trademarks and Geographical Indications in Article 21 regulates trademark registration. Several examples of well-known trademark infringement such as the Supermen case between DC Comic and PT Maxing Makmur experienced trademark problems due to duplication in trademark ownership without considering the existence of Article 21 of the MIG Law. Indonesia adopts a trademark registration system with a constitutive system. The occurrence of a trademark violation makes an article entitled "trademark rights violation (case study of the "superman" trademark DC Comics against PT Marxing Fam Makmur)". The problem in this journal is whether the use of the "Superman" brand by PT Marxing Fam Makmur for its wafer products constitutes a violation of the trademark rights owned by DC Comics? What are the legal consequences of the decision Number 29 / Pdt.Sus / Merek / 2019 / PN Niaga Jkt.Pst on the case of PT Marxing Makmur against DC Comics? The purpose of this study is to examine and analyze the brand problems from the case study. This research method is a normative legal research method. The legal research was conducted with a statutory approach, a case approach which was carried out by reviewing cases related to the issues at hand. The results of the study indicate that PT Marxing Fam Makmur violated the superman brand that has been owned by DC Comics since 1934. So that the cancellation of the superman brand in the name of PT Marxing Fam Makmur was granted.

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Corresponding Author:

Kadek Julia Mahadewi

Universitas Pendidikan Nasional

Email: juliamahadewi@undiknas.ac.id

1. INTRODUCTION

Background of the Problem

In the framework of Intellectual Property law, the existence of a trademark is a part of industrial Property Rights. The existence of this brand is regulated in the Paris *Convention for the Protection Of Industrial Property*, the existence of the brand is also regulated in the TRIPs Agreement. Indonesia is a member of the WTO - TRIPS agreement, Indonesia has harmonized laws and regulations related to substance rules on trademarks in accordance with the International standards of the TRIPs Agreement. Issued Law Number 20 of 2016 concerning Trademarks and Geographical Indications, hereinafter referred to as UU MIG. The existence of the MIG Law is a form of the seriousness of the Indonesian State in

supporting the protection of trademarks. The essence of this brand is a marker that distinguishes products from one to another so that there is a clear difference. The existence of a brand is the identity of a product, this can be seen from the presence of image components on the product, logos, and writing in the product so that consumers can distinguish one product from another form of promotion indirectly with the existence of special characteristics that mark the ownership of the product.

Trademark registration in Indonesia uses a constitutive system where the registration system can give rise to rights as the owner of the trademark. This results in the emergence of rights and obligations for brand owners in the legal protection they have. The existence of a *first-to-file* system of who first registers is considered a trademark rights holder. This is certainly a substantive examination so as not to cause losses for brand creators in the midst of industrial competition in the 4.0 era. Referring to the case of the debate over their rights, Superman who we usually see superhero cartoon characters has the characteristic of wearing a blue shirt, wings are swollen, there is an inscription on the chest of S whose pose flies as an identical to Superman, this makes the specificity that occurs. Unintentionally, in the midst of the popularity of this Superman character, many misinterpret and use it for personal interests without looking at its ownership. This is why the superhero Superman character is used as a snack icon which is expected to have an attraction to existing products that attract consumer interest. Such a finding made by DC Comic as the inventor of the superman character objected so that a lawsuit was filed for PT Marxing Fam Makmur on April 3, 2018 at the Jakarta Commercial Court with Central Jakarta Case Number 17/Pdt.SusHKI/Brand/2018/PN Niaga Jkt.Pst.

The existence of a well-known brand certainly brings maintenance in a product where by appearing a logo in the market attracts the interest of the public in their attention to having an existing product. The existence of well-known brands is certainly an attraction for consumers in shopping and increases the value of these goods, the economic value of brand products and services in trade. The magnitude of the benefits felt in the brand makes brand owners very careful in using it. The use of this brand user can make brand owners more careful in the existence of many crimes found in the market such as duplicates of well-known brand products, plating logos on other forms. The importance of providing legal protection for trademark rights needs to be considered so that there is no loss felt to trademark rights holders. One of the things that caught the attention was the "Superman" peacock dispute in this case DC Comic against PT Marxing Fam Makmur as the Defendant. There is a bad element from PT Marxing Fam in labeling its wafer products using the Superman logo with the registration of trademark rights at the Director General of Intellectual Property Rights so that a brand certificate is issued for the marketing of wafer food products in the community.

The existence of DC Comic is a well-known company in the United States that was established in 1934 until now, Pengangat created a superher comic that contains a superhero animated character whose character uses a blue shirt, S logi on the chest and red wings so that when depicted it is always in a flying condition. This Superman comic is popular all over the world not only in the United States but also in the United States. The existence of the Superman logo is a trend every year such as movies, magazines, toys, clothes, posters, tumblers and stickers must be popular. DC Comics is one of the largest and most well-known comic book publishers, both in the United States and around the world, since its founding in 1934 until now. The company is known for its comics that carry the superhero genre, which have sold tens of thousands of copies not only in the United States, but also in various other countries. One of the fictional characters created by DC Comics and well known by the public, including in Indonesia, is SUPERMAN. In this case, PT. Marxing Fam Makmur as the Defendant is alleged to have registered two "Superman"

brands that imitate, plagiarize, or take advantage of the popularity of DC Comics' "Superman" brand for his business interests. This action has the potential to create unfair business competition and mislead consumers. DC Comics, as the Plaintiff in this case, has been using and popularizing the "Superman" brand since 1934, which is evident from the many comic products, movies, and magazines that have been circulating from the past to the present.

DC Comics filed a lawsuit related to the "Superman" brand to the Commercial Court at the Central Jakarta District Court with Decision Number 29/Pdt.SusHKI/Brand/2019/PN Niaga Jkt.Pst on Wednesday, November 25, 2020. In its ruling, the court granted all of the lawsuits filed by DC Comics, stating that DC Comics' registered trademark "Superman" is a well-known brand. The court also determined that DC Comics is the party entitled to the "Superman" trademark in Indonesia, and recognized the registration of the "Superman" trademark with the Registration Number IDM000374439 in class 30 and the Registration Number IDM000374438 in class 34 on behalf of PT. Marxing Fam Makmur as a registration was carried out in bad faith. As a result, the court canceled the registration of the "Superman" trademark owned by PT. Marxing Fam Makmur and all its consequences. The Court also ordered the Registrar to submit a copy of this decision to the Co-Defendants to carry out the cancellation of the registration of the registered trademark "Superman" with Registration Number IDM000374439 in class 30 and Registration Number IDM000374438 in class 34 from the General Register of Trademarks, as well as announce it in the Official Gazette of the Trademark. When the Defendant's "Superman" trademark is registered with the Directorate General of Intellectual Property (DJKI), the registration should have been rejected because the trademark contains elements that can be misleading regarding the origin, quality, type, size, and purpose of use of the goods. In addition, the brand does not have sufficient distinguishing power compared to DC Comics' original Superman character, which is contrary to the provisions of letters (c) and (e) of Article 20 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The main function of a brand is as a differentiator, and the existence of this differentiating power is very important to prevent confusion in the market (*likelihood of confusion*).

2. RESEARCH METHODS

The writing of this journal uses the Normative Legal Research Method by analyzing Law Number 20 of 2016 concerning Trademarks and Geographical Indications in article 21 regulating the Registration of Rejected Marks, *TRIPS Agreement* article 16 concerning the regulation of Marks. Normative Law Research is legal research based on the problem of norms in laws and regulations. Type of research approach using the Law approach and the case approach. There are 2 sources of Legal Materials, namely Primary Legal Materials Based on the applicable laws and regulations, Law Number 20 of 2016 concerning Trademarks and Geographical Indications, *TRIPS Agreement* The second Secondary Legal Materials use literature related to trademark rights. The technique of collecting legal materials uses literature study by dancing the materials related to the books to be recorded and arranged systematically according to the discussion in the research. The Legal Material Analysis technique uses juridical descriptive where in writing a journal the description of the problems written is made systematically,

3. RESULTS AND DISCUSSION

3.1 Use of the "Superman" trademark rights by DC Comics

The "Superman" trademark dispute case between DC Comics and PT Marxing Fam Makmur is one of the interesting cases in intellectual property law in Indonesia. On the one hand, DC Comics as the legal owner of the "Superman" brand claims that the use

of the brand by PT Marxing Fam Makmur for wafer products constitutes an infringement of their use of the "Superman" brand is not illegal.

Trademark rights are part of industrial property protected by the Intellectual Property Rights (IPR) system. According to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, in article 1 number 1, a trademark is defined as a sign that can be an image, logo, name, word, letter, number, color arrangement in the form of two or three dimensions, sounds, holograms, or a combination of two or more of these elements. Trademarks are used to distinguish goods and/or services produced by individuals or legal entities in the context of trade and services. Trademark rights, according to the law, are exclusive rights granted by the state to the owners of brands registered in the general register of trademarks for a certain period of time, which allows the owners to use the marks themselves or grant permission to other parties to Use. According to the Trademark Law, there are two categories of brands, namely Trademarks and Service Marks. A trademark is a trademark used on goods traded by individuals or groups collectively or by legal entities, to distinguish such goods from other similar goods, for example KFC, Yamaha, and Tupperware. Meanwhile, a Service Brand is a brand used for services that are traded by individuals or groups collectively or by legal entities, to distinguish such services from other similar services, for example BRI, TUV Rheinland, and AKAS (transportation services). The case discussed is included in the category of Commercial Cases.

The existence of a brand function in commerce. Brand functions include:

1. As an identification mark that distinguishes products from one company from other companies' products, it functions as an identity for the product and connects goods or services with its producers as a guarantee of the reputation of the business results traded.
2. As a means of trade promotion.
3. It is a guarantee or proof of the quality of goods through quality assurance.
4. Serves as an identification of the origin of the goods.

A trademark cannot be registered if it contains certain elements, such as: a trademark application submitted in bad faith, contrary to applicable laws and regulations, religious morality, morality, or public order; a mark that does not have distinguishing power; a mark that contains a mark that has become public property; or a mark that is a description or related to the goods or services for which registration is requested. In this context, the case discussed shows the infringement of trademark rights committed by PT. Fam Makmur's Marxing against DC Comics, taking into account the elements regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications in article 21, which regulates the similarity in principle or the whole.

1. Registered trademarks belonging to other parties or that have been filed in advance by other parties for similar goods and/or services.
2. A well-known brand belonging to another party for similar goods and/or services.
3. A well-known brand belonging to another party for goods and/or services that are not similar, which meet certain conditions.
4. Registered geographical indications.
5. The name or abbreviation of the name of a famous person, photograph, or the name of a legal entity owned by another person, except with the written consent of the owner.
6. Imitation or resemblance of the name, abbreviation of the name, flag, emblem, or symbol of a national or international country or institution, except with the written consent of the authorized party.

Based on Article 20 of the Trademark Law, it can be understood that the superman wafer issued by PT Marxing Fam Makmur is a trademark infringement. There is an unauthorized use of the superman trademark rights issued by DC Comic. Second, there is a similarity of the trademark in the registration with the superman logo by PT Marxing Fam Makmur to DC Comic. Third, there is bad faith in utilizing well-known brands in an effort to increase sales carried out by PT Marxing Fam Makmur by using superhero characters created by DC Comic. The analysis given in relation to legal protection in Intellectual Property using the Intellectual Property Rights Theory by Robert M. Sherwood is:

Reward Theory This theory explains the recognition of intellectual works that have been produced by a person so that inventors/creators or designers must be rewarded in exchange for their creative efforts in finding/creating these intellectual works. This is aimed at the family, the certificate of ownership of the goods produced has the benefit of legal protection provided by the state for its ownership in relation to trademark rights, has a period of 10 years of ownership and can be extended. This happened with the existence of a Brand Rights Certificate obtained by DC Comics.

Recovery Theory This theory states that inventors/creators/designers who have spent time, money and energy in producing their intellectual works must recover what they have spent. By introducing the character of Superman in 1938 by DC Comics, its existence has high economic value.

Incentive Theory This theory relates the development of creativity by providing incentives for the inventors/creators or designers. The provision of this incentive is a form of appreciation for the trademark copyright work that exists here, there is a reward given in the form of a brand creator with a permit to multiply the goods created.

Risk Theory This theory states that intellectual property rights are a work that contains risks. Intellectual Property Rights that are the result of a research contain risks that may allow others who first find such a way to correct them so that it is reasonable to provide legal protection against such risky efforts or activities. The registration of trademark rights here is one of the preventive efforts for infringement and the creator is able to explain the object that is registered for the uniqueness of the item as a form of marker such as the story of Superman is a famous rescue cartoon character in the International World

Economic Growth Stimulus This theory recognizes that the protection of IPR is a tool of economic development and what is meant by economic development is the overall purpose of building an effective IPR protection system. With the existence of trademark rights on registered goods, it has a function as a distinguishing mark which can later be an effort to increase sales of goods. Superman, created by DC Comics, became famous for the figure shown as a superhero so that if it has a high value in the business world.

3.2 Legal consequences of decision Number 29/Pdt.Sus/Brand/2019/PN Niaga Jkt.Pst against the Case of PT Marxing Makmur Versus DC Comics

The issuance of Decision Number 29 / Rev. Sus / Brand / 2019 / PN Niaga Jkt Pst in the trademark dispute between PT Marxing Makmur and DC Comics has implications related to the protection of intellectual property rights, especially trademark rights. The legal consequences given in the verdict. In general, the decision can provide several legal consequences, including:

1. Trademark Rights Cancellation

This trademark dispute began when DC Comics as the Plaintiff wanted to register its "Superman" brand to the Ministry of Law and Human Rights of the Republic of

Indonesia (Kemenkumham RI), while the registrations submitted by the Plaintiff on the "Superman" brand are class 9, class 14, class 16, class 21, class 25, class 28, class 30, and class 32. Then it was found that the "Superman" brand owned by PT. Marxing Fam Makmur, in this case as the Defendant, had first registered in Indonesia on March 7, 1993 in class 30 and class 34. The brand is registered with Agenda No. IDM000374439 and IDM000374438 which at the beginning the owner of the brand was Sutin Susilawati. The "Superman" brand owned by the Defendant has been extended in 2003 and 2013, then in 2013 the owner of the Sutin Susilawati brand transferred the "Superman" brand to PT. Marxing Fam Makmur through the sale and purchase as per the brand sale and purchase agreement No. 37, dated March 22, 2013. In fact, there is indeed no party who registered the brand with the name "Superman" before Sutin Susilawati, so it can be said that Sutin Susilawati was the first person to register the name Superman as a brand in Indonesia. Indonesia is a country that adheres to *the principle of first to file* with the understanding of a principle where the owner of the trademark will get protection of trademark rights due to being registered for the first time.

Based on the discovery, DC Comics as the Plaintiff filed an objection to the registered "Superman" trademark in class 30 and class 34 with agenda numbers IDM000374439 and IDM000374438 and also objected to the trademark registration by PT. Marxing Fam Makmur with agenda number D002015034068, Brand "Siantar Top Superman Choco" with agenda number D002014034070, and Brand "Siantar Top Superman Chocomax" with agenda number D00201534066 with registration date August 11, 2015 in class 30. However, at that time, the lawsuit filed by DC Comics through Decision Number 17/Pdt.Sus- Brand/2018/PN Niaga Jkt.Pst gave the result of rejection by the Panel of Judges. The Plaintiff's lawsuit is considered premature and the lawsuit against his "Superman" brand is an *Exceptio Obscur Libel* lawsuit or a vague and unclear lawsuit.

Given that in the lawsuit, the Plaintiff basically requested the cancellation of the "Superman" trademark and the cancellation of the request for registration of the "Superman" trademark on behalf of the Defendant who was being applied for registration with the Co-Defendant (Kemenkumham RI) so that the "Superman" trademarks in the name of the Plaintiff registered could be granted and the certificate could be issued. Meanwhile, in the Plaintiff's Power of Attorney is only to cancel the brand, so that the Authorized Person has committed an act that exceeds the authority given by the Power of Attorney. Followed by Cassation Decision Number 1105 K/Pdt.Sus-HKI2018/PN Niaga Jkt.Pst with its ruling, namely in the form of granting the exclusion of the Defendant and Co-Defendant for part and in the subject matter of the case containing a declaration that the Plaintiff's lawsuit was not accepted. However, this famous brand dispute case did not stop there. After struggling for more than 2 (two) years, on May 27, 2020, finally DC Comics as the Plaintiff which is also a comic publishing company from the United States the owner of the Superman character, again filed a lawsuit against the "Superman" brand to the Commercial Court at the Central Jakarta District Court with Decision Number 29/Pdt.Sus-HKI/Brand/2019/PN Niaga Jkt.Pst that DC Comics as the Plaintiff is the only party entitled to the "Superman" brand in Indonesia; declare the Plaintiff's "Superman" brand to be a well-known brand; and requested to cancel the "Superman" trademark in classes 30 and 34 belonging to the Defendant on the basis of bad faith. So with a similar lawsuit, the Plaintiff finally won the rights to the legal "Superman" trademark on Wednesday, November 25, 2020. The Panel of Judges decided to grant the Plaintiff's lawsuit against the Defendant in its entirety. Based on this Court Decision,

the trademark registered by PT Marxing Makmur is invalid and must be canceled. This means that the brand has no legal protection.

Related to the theory of legal certainty. Legal certainty is a question that can be answered normatively, not sociology. Normative legal certainty is when a regulation is made, invited, definitively regulated, clear and logical, meaning there is no doubt (*multiple interpretations*) and logical in the sense that it becomes another norm system so that it does not cause norm conflicts. Gustav Radburch put forward 4 (four) basic things related to legal certainty, namely:

1. First, that the law is positive, meaning that the positive law is the law
2. Second, that the law is based on facts, meaning in reality
3. Third, facts must be formulated in a clear way so as to avoid mistakes in meaning in addition to being easy to implement
4. The four positive laws must not be easily changed

If we move on to the existing case that in the cancellation of the grant of trademark rights that occurred to PT Marxing Makmur is a correct meaning of the fulfillment of Gustav Radburch's theory of legal certainty where in the Trademark Law Number 20 of 2016 there is in the provisions of article 21 which states:

1. The application is rejected if the trademark is similar in principle or in whole to:
 1. Registered trademarks belonging to another party or pre-applied by other parties for goods and/or services
 2. Well-known brands belonging to other parties for goods of or the like
 - a. Merek terkenal milik pihak lain untuk barang dan atau jasa tidak sejenis yang memneuhi persyaratan tertentu

This is evidenced by the creation of the superhero character "Superman" created by DC Comics and popularized internationally.

Article 21 paragraph (2) The application is rejected if the trademark that is known to be in the superman character is a well-known trademark which in this case is known to foreign countries. Specifically, PT Marxing Fam Makmur's brand contains three main elements in the form of the foreign word "Superman" (with a distinctive writing form), the S Logo; and paintings/drawings of Superman characters. This is enough to explain that these three elements are identical or very similar to the main elements of the "Superman" brands that DC Comics has owned for a long time.



Merek-merek "Superman" milik DC Comics



Merek-merek "Superman" milik PT Marxing Fam Makmur

From the two brands, it can be seen that PT Marxing Fam Makmur's "Superman" brand has similarities in the form of writing, logos, and

images/paintings, and even similarities in the sound mention and pronunciation of PT Marxing Fam Makmur's "Superman" brand to DC Comics' "Superman" brand. The "Superman" trademark owned by PT Marxing Fam Makmur, when the trademark is registered with the Directorate General of Intellectual Property Rights, as a legal entity in charge of dealing with intellectual property rights including trademarks, the trademark with the superhero character Superman owned by PT Marxing Fam Makmur will be contrary to letters (c) and (e) of Article 20 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, This is because the "Superman" brand owned by PT Marxing Fam Makmur contains elements that can be misleading about the origin, quality, type, size, type, purpose of use of the goods and does not have the distinguishing power to the brand from the original character Superman owned by DC Comics, so that the "Superman" brand owned by PT Marxing Fam Makmur cannot be registered.

Its registration or rejection of its application as a trademark by the Directorate General of Intellectual Property. In fact, the concept of differentiation has a vital and fundamental function in a brand, because the existence of differentiation in a brand will have an impact on the brand's ability not to cause confusion when it is marketed. The existence of an obligation to have a distinguishing power on a brand with certain characteristics makes brands circulating in the community that are not better known than existing or already known by the public and have been registered, then carry out acts of brand imitation of brands that previously existed or can be called well-known brands, then it will cause the emergence of unfair competition among business actors. With the explanation that has been explained in the previous paragraph, it proves that DC Comics as the de facto owner of the "Superman" brand is seen by DC Comis as having popularized "Superman" in 1934, feeling disadvantaged by the presence of the "Superman" brand owned by PT Marxing Fam Makmur which is considered to have the same in essence for non-similar goods. Therefore, the "Superman" trademark owned by PT Marxing Fam Makmur should not be registered or rejected as a trademark by the Directorate General of Intellectual Property, because this is in line with the purpose and purpose of Article 21 paragraph (1) of the MIG Law

1. Compensation:

1. Material Losses: DC Comics as an aggrieved party has the right to file a claim for compensation for material losses experienced, such as business losses due to unfair competition.
2. Immaterial Damages: In addition, DC Comics is also entitled to immaterial damages for non-material losses, such as damage to brand reputation and clarifications provided due to mistakes made by the defendant PT.

Based on the provisions of article 83 of the Law on Trade, those who have rights to the trademark can file a lawsuit against the registered trademark to the Commercial Court. The existence of the Supeman brand certainly has a disadvantage to DC Comic because similarities have been made in the manufacture of wafers that are circulated in Indonesia.

The Theory of Legal Consciousness according to Soerjono Soekanto proposes four indicators of legal awareness gradually:

1. Knowledge of the law is knowledge regarding certain behaviors regulated by written law, namely about what is prohibited and what is allowed

2. Understanding the law is a amount of information that a person has about the content of the rules, namely about the content, objectives and benefits of the said regulations
3. Attitude towards the law is a tendency to accept or reject the law because of the appreciation or that the law is beneficial to human life, in this case there is already an element of appreciation for the rule of law
4. Legal behavior is about whether or not a legal rule applies in society.

Related to the above, it can be seen that the theory of legal awareness in understanding the use of trademark rights in a trademark is very important in a company so that there are no problems with the products created. The existence of the protection of trademark rights makes entrepreneurs more careful in issuing products, there are restrictions given based on the Trademark Law, teaching the Importance of Trademark Registration so that the Company needs to immediately register its trademark to get strong legal protection and the creation of Healthy Competition in the event that this Decision encourages the creation of healthy business competition and does not harm other parties.

1. Law Enforcement:

Based on law enforcement on the above case using the theory of legal protection, Philipus M Hadjon stated :

1. Preventive Legal Protection is legal protection that is provided through the prevention of this being carried out from the beginning of the implementation of the law. This is done with the existence of the Trademark Law as a form of protection provided so that infringement does not occur and the court decision in trademark disputes is a prevention of this infringement as seen in Chapter IV Trademark Registration in the Trademark Law Articles 20-22.
2. Repressive legal protection: is protection where as an enforcement of violations provides a deterrent effect in the form of punishment in accordance with the act violated so that there is no repetition of similar cases. This is contained in article 83 and article 100 of the Trademark Law.

4. CONCLUSION

The verdict in the Superman trademark dispute case between DC Comics and PT Marxing Fam Makmur confirms that the use of *the Superman* brand by PT Marxing Fam Makmur violates the trademark rights owned by DC Comics as stipulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Through Decision Number 29/Pdt.Sus/Brand/2019/PN Niaga Jkt.Pst, the court canceled the rights of *the Superman* trademark registered by PT Marxing Fam Makmur considering bad faith in the use of well-known brands for commercial purposes.

From the perspective of intellectual property law, this case strengthens the urgency of protecting trademark rights based on *the theory of Reward, Recovery, Incentive, Risk, and Economic Growth Stimulus*. In addition, this decision also affirms the *principle of first to file* in the trademark legal system in Indonesia, which gives priority rights to the party who first legally registers a trademark.

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